IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/07/2002

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice N.V. BALASUBRAMANIAN

T.C. No.19 of 1995 and T.C. No. 20 of 1995

M/s. Govindan Engineering Foundry
Trichy :: Appellant

-Vs-

The State of Tamil Nadu, rep. by
the Joint Commissioner III (SMR)
of Commercial Taxes, Madras :: Respondent

Tax Case Appeals under Sec.37 of the TNGST Act
against the orders passed by the Joint Commissioner,
III (SMR) of Commercial Taxes, Madras

!For Appellant :: Mr. R. Gangadharan

^For Respondent :: Mr. S.V. Radhakrishnan, GA

:JUDGMENT

V.S. SIRPURKAR, J.

This judgment shall dispose of two tax case appeals, they being T. C. Appeal Nos.19 and 20 of 1995, as the issue involved is identical.

2. By these appeals, under Sec.37 of the Tamil Nadu General Sales Tax Act (in short TNGST Act), the assessee challenges the orders passed by the Joint Commissioner dated 4-11-1994 (in T.C. No.19 of 1995) and 12-9-1994 (in T.C. No.20 of 1995), which he had passed under his suo motu revisional powers. In these orders, the Joint Commissioner had set aside the orders passed by the Appellate Assistant Commissioner and restored the orders passed by the assessing authority. The Joint Commissioner also inflicted penalty under Sec.9(2) of the Central Sales Tax (in short CST Act) read with Sec.6(2) of the TNGST Act. Some facts, which are common to both the appeals, would be necessary to understand the controversy.

3. The assessee is a partnership, carrying on the business under the name and style of Tvl. Govindan Engineering Foundary, Trichy, Tamil Nadu. The assessee has a branch, operating under the same name and style at Chitoor in Andhra Pradesh. There is one other partnership concern, carrying on business in the name of M/s. Balaji Mills Stores, Chittoor High Road, Chittoor, Andhra Pradesh.

3.1. According to the assessee, M/s. Govindan Engineering Foundry operated both at at Trichy and Chittoor and made branch transfer of its goods. Chittoor branch thereafter sold the goods to Balaji Mills Stores. The assessee firstly claimed a taxable turnover of Rs.96,917 /- against the assessment year 1987-88 under the CST Act (in T.C. No.19 of 1995) and Rs.88,485/- against the assessment year 1989-90 under the TNGST Act (in T.C. No.20 of 1995).

3.2. There was an inspection of the place of business of the assessee by the officers of the Enforcement Wing on 11-12-1989 and certain records and documents were recovered. The records revealed that the goods sent by way of branch transfer by the assessee to the Chittoor branch in Andhra Pradesh while the Chittoor branch sold the entire goods in two or three days to Balaji Mill Stores. The said Balaji Mill Stores is also a partnership firm but, significantly enough two partners in the assessee firm are common in the sense that they also the partners of Balaji Mill Stores. In addition, Balaji Mill Stores have three more partners and, therefore, the claim of the assessee, even before the assessing officer, was that there could be no sales-tax liability as the goods were transferred from Tiruchy in Tamil Nadu to Chittoor in Andhra Pradesh only by way of “branch transfer” under Form F. It was also their claim that the tax was assessed and paid under the Andhra Pradesh General Sales Tax Act. This claim was disallowed by the Assessing Authority and he assessed the turnover of Rs.2,41,010/- (in T.C. No.19 of 1995) and Rs.2,38,066/- (in T.C.No.20 of 1995) as interstate sales.

3.3. The assessee preferred appeals before the Appellate Assistant Commissioner, who allowed the appeals relying on the decision of this Court in STATE OF TAMIL NADU v. HERCULES RUBBER CO. (54 STC 84). The appellate authority accepted the case that the goods were transferred by way of “branch transfer” from Tiruchy to Chittoor, which was supported by Form Fs.

3.4. The order of the Appellate Assistant Commisssioner, however, did not find favour with the Joint Commissioner, who, in exercise of his suo motu revisional powers under the Act, instituted revisions and allowed the same as stated earlier, necessitating the present appeals before us under Sec.37 of the TNGST Act.

4. At the outset, the learned counsel for the appellant pointed out that the basis of the finding given by the revisional authority in the impugned orders was that the Chittoor branch was not the branch office of the assessee as the Chittoor branch had three partners viz. M/s. T. Govindan, T. Kesavan and G. Purushothaman while the Tiruchy branch had only two partners, viz. M/s. T. Govindan and T. Kesavan. Learned counsel

pointed out that the revisional authority has proceeded on the incorrect factual basis that the dealing was between two different partnership firms and, therefore, it could not be said to be a branch transfer from Tiruchy to Chittoor. In support of his contention, learned counsel also filed additional typed set of papers wherein he has relied upon the copy of the partnership deed dated 29-4-1983; copy of Form D1 Inspection Report of Deputy Commercial Tax Officer; copy of the assessment order for the year 1989-90 under the Andhra Pradesh General Sales Tax Act as also the tax clearance certificate issued by the Income Tax Officer, City Ward, Trichy. From all these papers, learned counsel very forcefully contends that there was no question of their being two firms and the Chittoor branch was nothing but the branch office of the assessee firm. Learned counsel, therefore, urges that a finding that the transaction between the Trichy branch and Chittoor branch was between two different legal entities is absolutely incorrect and thereby the order of the revisional authority has immensely suffered.

5. We must say that the learned counsel is correct in his contention that this transaction was in between the assessee and its branch office at Chittoor. Learned counsel for the Department could not take any exception to any voluminous documentary evidence produced. We have tried to see the record which was produced before us and that also does not suggest that the transaction of sale between the Tiruchy branch and Chittoor branch was between two different entities. We were also taken through the finding in the revisional order where the Joint Commissioner has given a finding that the goods had moved in pursuance of the orders by the Chittoor branch to the Tiruchy branch and, therefore, this transaction would fall as an interstate sale. The authority seems to have relied upon the decision in MEHTA GROUP OF INDUSTRIES v. STATE OF HARYANA (75 STC 428). We are convinced that there has been a factual mistake. However, the further question would still persist as

to whether merely because of that could the assessee straight away succeed? In our opinion, there is something more in this matter which we shall presently show.

7. This becomes all the more clear from the fact that the Chittoor branch has not sold the goods to anybody else though a contrary claim was made in the reply to the show cause notice which was served upon the assessee. Not a single transaction could be pointed out by the learned counsel to show that the Chittoor branch had the dealings with any other party than the Balaji Mill Stores. It is, therefore, obvious that the real purchaser of the goods was Balaji Mill Stores which got the goods via Chittoor branch of the assessee and in fact it is on account of those orders alone placed by it with the Chittoor branch that the goods moved from Tiruchy to Chittoor and ultimately found their destination in Balaji Mill Stores. It is pointed out by the learned counsel that the Joint Commissioner had not considered any of these facts from this angle and the whole revisional order turns only on the basis of the finding that the partners in Chittoor were different from the partners in Tiruchy branch and, therefore, that was a transaction between two different entities. We do not think that the argument is sound because we find these facts even before the earlier referred finding is concluded by the revisional authority. The revisional authority has taken

note of the fact that there was a link between the assessee in Tamil Nadu and the ultimate buyer in Andhra Pradesh; that it is only to Balaji Mill Stores, Chittoor that all the goods in the same and for the very same price were sold. The revisional authority, therefore, proceeded to imply a contract between the Balaji Mill Stores and the assessee at Tiruchy. Therefore, it is obvious that the revisional authority has considered this aspect of there being a link between the assessee and Balaji Mill Stores and has given a finding. But for this finding, the matter would have been required to be sent back for reconsideration on the basis of the alleged factual error committed by the revisional authority in respect of the formation of the partnership but that is not felt necessary in view of the above said circumstances. The reliance placed upon the judgment of the Punjab and Haryana High Court in Mehta Group of Industries case, cited supra, is absolutely correct. The only difference is that in the aforementioned decision the intrastate sales were made on the same day while in our case, those have been effected after two or three days but the fact remains that the quantity of the goods sold and the price charged were identical. Learned counsel tried to urge that on facts this case was different but, critically examining the facts, the only difference that we have found is about the goods having been despatched to the other customers on the same day. We are of the clear opinion that a mere difference of two or three days in despatching the goods from the Chittor branch to Balaji Mill Stores would not make any difference. On the other hand, unlike in that case, it was obvious that Chittoor branch has not dealt with any other party excepting Balaji Mill Stores. That is an additional circumstance in our opinion to come to the conclusion that the goods must have moved in pursuance of the orders placed by Balaji Mill Stores. It is again to be noted that this finding is a pure “finding of fact” and, therefore, we would desist from interfering with it in our writ jurisdiction.

6. It is no doubt true that the goods firstly moved from Tiruchy to Chittoor branch. However, it has come by way of clinching evidence and also by way of a finding of fact that all the goods which came to Chittoor within two or three days of their arrival were further sold to Balaji Mill Stores. Now the most important fact which comes in mind is that Balaji Mill Stores has the same two partners, viz. M/s. T. Govindan and G. Purushothaman besides three other partners. As regards the transactions in between Chittoor branch and Balaji Mill Stores, there is a table given in the assessment order where eight such examples have been quoted by the assessing officer with the invoice numbers. It must be said that all the eight transactions examined completely matched in the sense that the goods which were received from Tiruchy to Chittoor were sold for the same price and in the same quantity to Balaji Mill Stores, Chittoor High Road, Andhra Pradesh. All the sales were made within two or three days of the receipt of the goods and only two or three sales were made beyond that period but they were all identical in the sense that the goods were received from Tiruchy for a particular price and in a particular quantity were sold to Balaji Mill Stores in the very same quantity, with the same price. Therefore, it is obvious that the so-called Chittoor branch was merely being used as a conduit and the goods went to Balaji Mill Stores, which was practically a firm belonging to the assessee, and because of the branch transfers no tax was liable to be paid under the CST Act and once the goods passed from Chittoor branch to Balaji Mill Stores, they passed only with the local tax and then Balaji Mill Stores

became free to sell the goods by way of second sale of the goods. Thus, the goods were reached to Andhra Pradesh with the lower tax rate in the hands of a concern which is no different from the assessee and, therefore, it was obvious that this was nothing but a novel scheme. It would be seen that the central sales tax would have to be paid at the higher rate if the goods were directly despatched from the assessee to Balaji Mill Stores and then Balaji Mill Stores would also have to pay the tax if the goods were to be sold by them in Andhra Pradesh. By using the Chittoor branch as a conduit, the assessee has avoided at least one payment of the tax under the CST Act.

8. Learned counsel again invited our attention to the decision on which the appellate authority had relied upon. That decision being Hercules Rubber Co. Case, cited supra. However, the major factual difference is that in the reported decision there was no link found between the assessee in Madras and the buyers in Andhra Pradesh whereas, in our case, there is a direct link between the assessee and the Balaji Mill Stores where two partners are common. The sale of identical goods of identical quantity for same price by the Chittoor branch of the assessee to Balaji Mill Stores would further establish the link and again the Chittoor branch not having any transaction with anybody excepting Balaji Mill Stores would drive the last nail on the case of the assessee. In that view, we are of the opinion that the
appellate authority could not have relied upon this decision.

9. In the result, the appeals fail and the orders of the Joint Commissioner are confirmed. No costs.

Index:Yes

Website:Yes

Jai/-

11-07-2002

To:

1. The Deputy Commercial Tax Officer IV (Enforcement)
Tiruchy

2. The Appellate Assistant Commissioner (CT), Tiruchy

3. The Joint Commissioner III (SMR) of Commercial Taxes
Office of the Special Commissioner and Commissioner
of Commercial Taxes, Chepauk, Madras

4. The Commissioner of Income-tax, Chennai-34

5. The Assistant Registrar
Income Tax Appellate Tribunal
Chennai-34

V.S. SIRPURKAR, J.
and
N.V. BALASUBRAMANIAN, J.

JUDGMENT in
T.C. Appeals 19 & 20 of 1995